

JAN. 20. 2006 3:11PM
TO: USPTO

ZILKA-KOTAB, PC

NO. 1642 P. 1/25

ZILKA-KOTAB

PC
ZILKA, KOTAB & FEECE™

RECEIVED
CENTRAL FAX CENTER

JAN 20 2006

100 PARK CENTER PLAZA, SUITE 300
SAN JOSE, CA 95113

TELEPHONE (408) 971-2573
FAX (408) 971-4660

FAX COVER SHEET

Date: January 20, 2006	Phone Number	Fax Number
To: Board of Patent Appeals & Interferences		(571) 273-8300
From: Kevin J. Zilka		

Docket No.: BVOC005

App. No: 09/769,638

Total Number of Pages Being Transmitted, Including Cover Sheet: 25

Message:

Please deliver to the Board of Patent Appeals & Interferences.

Thank you,

Kevin J. Zilka

☐ Original to follow Via Regular Mail ☒ Original will Not be Sent ☐ Original will follow Via Overnight Courier

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DO NOT RECEIVE ALL PAGES OR IF YOU ENCOUNTER
ANY OTHER DIFFICULTY, PLEASE PHONE Erica
AT (408) 971-2573 AT YOUR EARLIEST CONVENIENCE

January 20, 2006

RECEIVED
CENTRAL FAX CENTER

JAN 20 2006

Practitioner's Docket No. BVOC005

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bertrand A. Damiba

Application No.: 09/769,638

Group No.: 2173

Filed: 01/24/2001

Examiner: Nguyen, C.

For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR A TRANSCRIPTION
GRAPHICAL USER INTERFACE

Mail Stop Appeal Briefs - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION-37 C.F.R. § 41.37)

1. Transmitted herewith, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on October 20, 2005.
2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

_ deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

_ with sufficient postage as first class mail.

37 C.F.R. § 1.10*

_ as "Express Mail Post Office to Addressee"

Mailing Label No. _____ (mandatory)

TRANSMISSION

_ facsimile transmitted to the Patent and Trademark Office, (571) 273 - 8300.

Date: 1/20/06

Signature

Erica L. Farlow

(type or print name of person certifying)

* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Transmittal of Appeal Brief--page 1 of 2

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. § 41.20(b)(2), the fee for filing the Appeal Brief is:

small entity	\$250.00
Appeal Brief fee due	\$250.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee	\$250.00
Extension fee (if any)	\$0.00
TOTAL FEE DUE	\$250.00

6. FEE PAYMENT

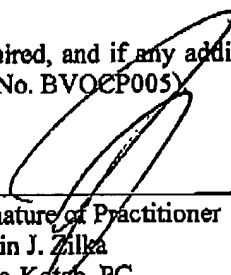
Authorization is hereby made to charge the amount of \$250.00 to Deposit Account No. 50-1351 (Order No. BVOC005).

A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. BVOC005).

Reg. No.: 41,429
Tel. No.: 408-971-2573
Customer No.: 28875



Signature of Practitioner
Kevin J. Zilka
Zilka-Kotab, PC
P.O. Box 721120
San Jose, CA 95172-1120
USA

Transmittal of Appeal Brief—page 2 of 2

JAN 20 2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
)
Damiba) Group Art Unit: 2173
)
Application No. 09/769,638) Examiner: Nguyen, Cao H.
)
Filed: 1/24/2001) Date: January 20, 2006
)
For: SYSTEM, METHOD AND)
COMPUTER PROGRAM PRODUCT FOR A)
TRANSCRIPTION GRAPHICAL USER)
INTERFACE)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences**APPEAL BRIEF (37 C.F.R. § 41.37)**

This brief is in furtherance of the Notice of Appeal, filed in this case on October 20, 2005.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(i)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS
- IV STATUS OF AMENDMENTS
- V SUMMARY OF CLAIMED SUBJECT MATTER
- VI ISSUES
- VII ARGUMENTS
- VIII APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

01/23/2006 YPOLITE1 00000073 501351 09769638

01 FC:2402 250.00 DA

- 2 -

**IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY THE APPELLANT IN THE
APPEAL**

The final page of this brief bears the practitioner's signature.

- 3 -

I REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest in this appeal is BeVocal, Inc.

- 4 -

II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c) (1)(ii))

With respect to other prior or pending appeals, interferences, or related judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no other such appeals, interferences, or related judicial proceedings.

Since no such proceedings exist, no Related Proceedings Appendix is appended hereto.

- 5 -

III STATUS OF CLAIMS (37 C.F.R. § 41.37(c) (1)(iii))**A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

Claims in the application are: 1, 3-7, 9-13 and 15-22

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims withdrawn from consideration: None
2. Claims pending: 1, 3-7, 9-13 and 15-22
3. Claims allowed: None
4. Claims rejected: 1, 3-7, 9-13 and 15-22

C. CLAIMS ON APPEAL

The claims on appeal are: 1, 3-7, 9-13 and 15-22

See additional status information in the Appendix of Claims.

- 6 -

IV STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))

As to the status of any amendment filed subsequent to final rejection, there are no such amendments after final.

- 7 -

V SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))

With respect to a summary of Claims 1, 7, and 13, as shown in Figure 4, a transcription graphical user interface is provided, which is adapted for displaying an utterance icon for prompting the emission of an utterance via a speaker upon the selection thereof (e.g. item 402 of Figure 4), and depicting a transcription field for allowing entry of a transcription of the utterance utilizing a keyboard (e.g. item 406 of Figure 4). In use, the transcription graphical user interface is displayed using hypertext markup language (HTML) and a comment field is depicted for allowing entry of comments associated with the transcription utilizing the keyboard (e.g. item 408 of Figure 4). Furthermore, the comments include a performance of a transcriber in transcribing the utterance. Note pages 18-20, for example.

- 8 -

VI ISSUES (37 C.F.R. § 41.37(c)(1)(vi))

Following, under each issue listed, is a concise statement setting forth the corresponding ground of rejection.

Issue # 1: The Examiner has rejected Claims 1, 3-7, 9-13 and 15-22 under 35 U.S.C. 103(a) as being unpatentable over Crow et al., U.S. Patent No. 6,538,665, in view of Brooks et al., U.S. Patent No. 6,477,493.

- 9 -

VII ARGUMENTS (37 C.F.R. § 41.37(c)(1)(vii))

The claims of the groups noted below do not stand or fall together. In the present section, appellant explains why the claims of each group are believed to be separately patentable.

Issue # 1:

The Examiner has rejected Claims 1, 3-7, 9-13 and 15-22 under 35 U.S.C. 103(a) as being unpatentable over Crow et al., U.S. Patent No. 6,538,665, in view of Brooks et al., U.S. Patent No. 6,477,493.

Group # 1: Claims 1, 3, 7, 9, 13 and 15

The Examiner has relied on Brook's disclosure of "user input requesting enrollment using a transcription device" wherein the user input includes "a user keyboard entry" (Col. 6 lines 18-24) to make a prior art showing of appellant's claimed "depicting a transcription field for allowing entry of a transcription of the utterance utilizing a keyboard." Appellant respectfully disagrees with this assertion.

Specifically, appellant respectfully asserts that Brooks does not even suggest a transcription field for allowing entry of a transcription of the utterance. Brooks simply teaches user input that requests enrollment, and not a user entering a transcription of the utterance emitted. In addition, the transcription device disclosed by Brooks simply records audio and transfers the audio to a speech recognition system (Col .5 lines 17-18). Such transcription device is not even remotely similar to appellant's transcription field for allowing entry of a transcription.

In the latest Office Action dated 4/20/2005, the Examiner has responded to appellant's arguments by emphasizing Col. 8, lines 13-27 in Brooks. Specifically, the Examiner has argued that such excerpt teaches that "user input can be in any suitable form, including...a user keyboard entry." Appellant respectfully asserts that the user input in such excerpt only relates to "an enrollment script to import." In addition, the enrollment script the user chooses to import is

- 10 -

input in response to "a list of enrollment recordings" but is not an "entry of a transcription of the utterance utilizing a keyboard," as claimed by appellant (emphasis added).

Still with respect to each of the independent claims, the Examiner has rejected appellant's claimed technique "wherein the transcription graphical user interface is displayed using hypertext markup language (HTML)" under Crow. Appellant again respectfully disagrees with this rejection.

In particular, Crow merely discloses "client computer systems...[that] may each, with appropriate web browsing software, access data, such as HTML documents (e.g. Web pages)...[wherein] such data may provide media...which may be played back/presented by the client computer systems" (Col. 6 lines 5-13). This teaching, however, in no way even suggests appellant's claimed transcription graphical user interface. Crow simply mentions accessing data through HTML documents, which does not even remotely encompass appellant's transcription graphical user interface, as claimed.

In the latest Office Action dated 4/20/2005, the Examiner has argued that Crow's disclosed "graphical user interface (GUI) that includes a number of features for referencing, playing back, and/or otherwise processing time-based media information" (Col. 5 lines 5-67) meets appellant's specific claim language mentioned above. Appellant respectfully points out that the GUI disclosed in Crow is utilized with respect to "time-based media information (e.g., video, animated graphics, and/or audio, etc.)." Clearly, the "time-based media information" such as that disclosed in Crow does not provide any sort of transcription in the manner claimed by appellant (emphasis added). Furthermore, Crow does not teach that the GUI is "displayed using hypertext markup language (HTML)," as claimed by appellant, but instead only teaches that the GUI is a "media player," which clearly would not inherently be displayed utilizing HTML.

Furthermore, with respect to each of the independent claims, the Examiner has rejected appellant's claimed "comment field [that] is depicted for allowing entry of comments associated with the transcription utilizing the keyboard" under Brooks' disclosure of allowing a user to request an enrollment script (Fig. 4A item 52) and notifying a user of insufficient percentage of words to complete enrollment (Fig. 4B item 66). Appellant respectfully asserts that simply

- 11 -

providing a method of receiving requests and outputting notifications (as provided by Brooks) does not disclose, let alone suggest, a comment field for entry of comments associated with a transcription, as claimed by applicant.

In the latest Office Action dated 4/20/2005, the Examiner has further relied upon Col. 9, lines 3-40 in Brooks to meet appellant's specific claim language mentioned above. Appellant notes, however, that such excerpt only relates to an "additional dictation of the enrollment script." Since such excerpt from Brooks only suggests dictation by a user, appellant respectfully asserts that Brooks does not teach a "comment field," as claimed by appellant (emphasis added). In addition, simply nowhere does Brooks disclose "allowing entry of comments associated with the transcription utilizing the keyboard," as claimed by appellant, especially since Brooks only discloses that a "user transfers a...recording of the enrollment script" (emphasis added).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on appellant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir.1991). Appellant respectfully asserts that at least the first and third elements of the *prima facie* case of obviousness have not been met.

Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #2: Claims 4, 10 and 16

The Examiner has relied on Brooks' disclosure of user activatable buttons, the selection of which initiate corresponding actions (Col. 9 lines 40-62) to make a prior art showing of appellant's

- 12 -

claimed technique “wherein a pair of selection icons are displayed for prompting the emission of previous and next utterances.” Appellant respectfully disagrees with this assertion.

In particular, appellant respectfully asserts Brooks’ buttons are simply activated each time a GUI is invoked, and such buttons only correspond to a limited set of specific actions, including previewing and printing enrollment scripts, initiating preliminary testing, initiating importation or transfer of the enrollment recording, initiating training of the speech recognition process, etc. Appellant’s claimed selection icons are clearly departed from this functionality set forth in Brooks. Specifically, appellant’s claimed selection icons prompt the emission of previous and next utterances, neither of which are prompted by Brooks’ disclosed buttons.

In the latest Office Action dated 4/20/2005, the Examiner has failed to respond to appellant’s specific arguments. Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #3: Claims 5, 11 and 17

The Examiner has relied on Brooks’ disclosure of a decoding process that can determine whether sentences are missing or repeated, and notifying a user of whether a minimum predetermined percentage of words are recognized (Col. 8 lines 28-67) to make a prior art showing of appellant’s claimed technique “wherein a hint is displayed corresponding to the utterance.” Appellant respectfully asserts that Brooks’ disclosure of decoding and notification processes do not even remotely relate to appellant’s claimed displaying a hint corresponding to the utterance.

In the latest Office Action dated 4/20/2005, the Examiner has failed to respond to appellant’s specific arguments. Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #4: Claims 6, 12 and 18

- 13 -

The Examiner has relied on Brooks' disclosure of a decoding process that can determine whether sentences are missing or repeated, and notifying a user of whether a minimum predetermined percentage of words are recognized (Col. 8 lines 28-67) to make a prior art showing of appellant's claimed technique "wherein the hint corresponds to a word matched with the utterance utilizing a speech recognition process." Appellant respectfully asserts that Brooks' disclosure of decoding and notification processes do not even remotely relate to appellant's claimed displaying a hint corresponding to a word matched with the utterance.

In the latest Office Action dated 4/20/2005, the Examiner has failed to respond to appellant's specific arguments. Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #5: Claim 19

The Examiner has relied on Col. 7, lines 10-40 in Brooks to make a prior art showing of appellant's claimed technique "wherein the transcription graphical user interface is in communication with a database containing untranscribed and transcribed utterance records." Appellant respectfully asserts that such excerpt only discloses digital transcription devices that are used to "transfer the recording from the transcription device to the computer system...[which is then] import[ed] to the speech recognition system." Thus, in Brooks, the recordings are only transferred with the aid of the transcription device, and as a result there is no "database containing untranscribed and transcribed utterance records," as specifically claimed by appellant (emphasis added).

Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

Group #6: Claims 20-22

- 14 -

The Examiner has simply rejected appellant's Claims 20-22 as corresponding to method Claims 1-6 and 19. Appellant respectfully asserts that the specific language set forth in Claims 20-22 is not present in Claims 1-6 and 19, and therefore a rejection based on such claims is insufficient. Furthermore, appellant points out that neither Brooks nor Crow teach such claim limitations.

Appellant thus respectfully asserts that at least the third element of the *prima facie* case of obviousness has not been met, since the prior art references, when combined, fail to teach or suggest all of the claim limitations, as noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

- 15 -

VIII APPENDIX OF CLAIMS (37 C.F.R. § 41.37(c)(1)(viii))

The text of the claims involved in the appeal (along with associated status information) is set forth below:

1. (Previously Presented) A method for providing a transcription graphical user interface, comprising the steps of:
 - (a) displaying an utterance icon for prompting the emission of an utterance via a speaker upon the selection thereof; and
 - (b) depicting a transcription field for allowing entry of a transcription of the utterance utilizing a keyboard;
 - (c) wherein the transcription graphical user interface is displayed using hypertext markup language (HTML);
 - (d) wherein a comment field is depicted for allowing entry of comments associated with the transcription utilizing the keyboard;
 - (e) wherein the comments include a performance of a transcriber in transcribing the utterance.
2. (Cancelled)
3. (Original) The method as recited in claim 1, wherein the transcription graphical user interface is capable of being displayed over a network utilizing a network browser.
4. (Original) The method as recited in claim 1, wherein a pair of selection icons are displayed for prompting the emission of previous and next utterances.
5. (Original) The method as recited in claim 1, wherein a hint is displayed corresponding to the utterance.
6. (Original) The method as recited in claim 5, wherein the hint corresponds to a word matched with the utterance utilizing a speech recognition process.

- 16 -

7. (Previously Presented) A computer program product for providing a transcription graphical user interface, comprising:
 - (a) computer code for displaying an utterance icon for prompting the emission of an utterance via a speaker upon the selection thereof; and
 - (b) computer code for depicting a transcription field for allowing entry of a transcription of the utterance utilizing a keyboard;
 - (c) wherein the transcription graphical user interface is displayed using hypertext markup language (HTML);
 - (d) wherein a comment field is depicted for allowing entry of comments associated with the transcription utilizing the keyboard;
 - (e) wherein the comments include a performance of a transcriber in transcribing the utterance.
8. (Cancelled)
9. (Original) The computer program product as recited in claim 7, wherein the transcription graphical user interface is capable of being displayed over a network utilizing a network browser.
10. (Original) The computer program product as recited in claim 7, wherein a pair of selection icons are displayed for prompting the emission of previous and next utterances.
11. (Original) The computer program product as recited in claim 7, wherein a hint is displayed corresponding to the utterance.
12. (Original) The computer program product as recited in claim 11, wherein the hint corresponds to a word matched with the utterance utilizing a speech recognition process.
13. (Previously Presented) A system for providing a transcription graphical user interface, comprising:
 - (a) logic for displaying an utterance icon for prompting the emission of an utterance via a speaker upon the selection thereof; and

- 17 -

- (b) logic for depicting a transcription field for allowing entry of a transcription of the utterance utilizing a keyboard;
 - (c) wherein the transcription graphical user interface is displayed using hypertext markup language (HTML);
 - (d) wherein a comment field is depicted for allowing entry of comments associated with the transcription utilizing the keyboard;
 - (e) wherein the comments include a performance of a transcriber in transcribing the utterance.
14. (Cancelled)
15. (Original) The system as recited in claim 7, wherein the transcription graphical user interface is capable of being displayed over a network utilizing a network browser.
16. (Original) The system as recited in claim 7, wherein a pair of selection icons are displayed for prompting the emission of previous and next utterances.
17. (Original) The system as recited in claim 7, wherein a hint is displayed corresponding to the utterance.
18. (Original) The system as recited in claim 11, wherein the hint corresponds to a word matched with the utterance utilizing a speech recognition process.
19. (Previously Presented) The method as recited in claim 1, wherein the transcription graphical user interface is in communication with a database containing untranscribed and transcribed utterance records.
20. (Previously Presented) The method as recited in claim 19, wherein the comments and utterance records are stored for facilitating a tuning of the utterance.
21. (Previously Presented) The method as recited in claim 3, wherein the utterance is transmitted to a plurality of users utilizing the network browser.

- 18 -

22. (Previously Presented) The method as recited in claim 1, wherein speech recognition is tuned utilizing the transcriptions.

- 19 -

**IX APPENDIX LISTING ANY EVIDENCE RELIED ON BY THE APPELLANT IN THE
APPEAL (37 C.F.R. § 41.37(c)(1)(ix))**

There is no such evidence.

- 20 -

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. BVOC005).

Respectfully submitted,

By:  _____

Kevin J. Zilka

Reg. No. 41,429

Date: 1/20/06

Zilka-Kotab, P.C.

P.O. Box 721120

San Jose, California 95172-1120

Telephone: (408) 971-2573

Facsimile: (408) 971-4660